

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BUCHAREST

UNCLAS STATE 297324

E.O. 11652:N/A

TAGS: CGEN

SUBJECT: JUDICIAL ASSISTANCE: TAKING OF DEPOSITIONS

REF: 76 STATE A-1357

1. DEPT HAS BEEN ASKED WHETHER, UNDER ROMANIAN LAW, EMBASSY CAN TAKE DEPOSITION ON WRITTEN QUESTIONS FOLLOWING PROCEDURE DESCRIBED UNDER 7 FAM 842.

2. DEPOSITIONS WERE SPECIFICALLY AUTHORIZED UNDER 1881 CONSULAR CONVENTION (ART. X), BUT 1972 CONVENTION ONLY PERMITS CONOFFS TO ACT AS NOTARIES PROVIDED THERE IS NOTHING CONTRARY IN LAW OF RECEIVING STATE. CONOFFS' FUNCTION IN TAKING DEPOSITION IS CERTAINLY THAT OF NOTARY (SEE E.G. FEDERAL RULES OF CIVIL PROCEDURE, RULE 28, "PERSONS BEFORE WHOM DEPOSITIONS CAN BE TAKEN", WHERE ONLY CRITERION IS THAT PERSON BE AUTHORIZED TO ADMINISTER AN OATH), SO THE ONLY QUESTION IS WHETHER THERE IS ANY PROVISION TO THE CONTRARY IN ROMANIAN LAW.

3. DEPT AWARE THAT MANY CIVIL LAW COUNTRIES, ESPECIALLY THOSE IN EASTERN EUROPE, CONSIDER THAT TAKING OF DEPOSITION BY CONOFF IS UNACCEPTABLE BECAUSE IN DEROGATION

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OF HOST COUNTRY'S SOVEREIGNTY. IF GOVT OF ROMANIA APPEARS TO BE LEANING IN THAT DIRECTION, PLEASE STRESS THAT UNDER U.S. LAW THERE IS NO JUDICIAL FUNCTION INVOLVED IN TAKING STATEMENT UNDER OATH FROM WITNESS. (RULE 28 OF F.R.C.P., MENTIONED ABOVE, MAKES THIS CLEAR). MOREOVER, SINCE TAKING OF DEPOSITION CLEARLY FALLS WITHIN SCOPE OF ACTS AUTHORIZED UNDER ART. X OF PRESENT CONSULAR CONVENTION, ONLY BASIS FOR FORBIDDING DEPOSITION IS SOME CONTRARY PROVISION OF ROMANIAN LAW. IF POST ASKS FOR RULING FROM MFA ON ACCEPTABILITY OF DEPOSITIONS, PLEASE INSIST ON CITATION OF STATUTE FOR REFERENCE IN EVENT OF UNFAVORABLE REPLY.

4. IF GOR AGREES TO PERMIT DEPOSITION, RECIPROCITY IS ASSURED UNDER 76 STATE A-L357.

5. PLEASE REPORT ACTION TAKEN SOONEST. ROBINSON

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